

## REMARKS

### I. Status of Claims

Claims 1-16, 18-19, and 25-39 are pending in the application. Claims 20-24 are canceled without prejudice to the subject matter therein.

Claim 29 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement.

Claims 1, 2, 12, and 13 stand rejected under 35 USC §103(a) as being allegedly unpatentable over U.S. Pat. No. 3,991,750 to Vickery in view of U.S. Patent No. 5,302,201 to Lucke. Claim 3 stands rejected under 35 USC §103(a) as being allegedly unpatentable over Vickery in view of Lucke, further in view of U.S. Patent No. 4,489,026 to Yalkowsky. Claim 4 stands rejected under 35 USC §103(a) as being allegedly unpatentable over Vickery in view of Lucke, further in view of U.S. Pat. No. 4,581,242 to Forster. Claims 5, 6, 8, 14-16, 18, and 25-28 stand rejected under 35 USC §103(a) as being allegedly unpatentable over U.S. Pat. No. 5,756,553 to Iguchi et al. in view of Forster, further in view of U.S. Pat. No. 6,607,598 to Schwarz et al. Claims 7, and 9-11 stand rejected under 35 USC §103(a) as being allegedly unpatentable over Vickery in view of Lucke, further in view of U.S. Pat. No. 4,586,457 to Dunajtschik. Claim 19 stands rejected under 35 USC §103(a) as being allegedly unpatentable over Vickery in view of Lucke, further in view of U.S. Pat. No. 3,696,188 to Fernandez et al. Claim 29 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Vickery in view of Lucke, further in view of U.S. Patent No. 3,484,360 to Sandrock.

### II. Rejections under 35 U.S.C. § 112

Claim 29 stands rejected under §112, 1<sup>st</sup> paragraph, as allegedly failing to comply with the written description requirement because it is “directed to a combination of spraying therapeutic from the channel positioned in the drum and tumbling an implant into a vat of therapeutic.” In response, the undersigned submits that the claim has been amended and that any argued inadequacy of disclosure has been resolved by the amendment, which broadens portions of the claim. Reconsideration of the rejection is requested.

### III. Rejections under 35 U.S.C. § 103

a. Claims 1, 2, 12, and 13 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Pat. No. 3,991,750 to Vickery in view of U.S. Patent No. 5,302,201 to Lucke.

The undersigned submits that claims 1 and 2 are at least patentable over the cited references because claim 1 recites, “...placing therapeutic into the drum by moving the therapeutic through a channel positioned in fluid communication with the drum, the channel containing a plurality of orifices.” (emphasis added) In rejecting claims 1 and 2, the Office action recognizes that Vickery ‘750, which regards a treated pellet for controlling the weight gain of animals, does not teach or suggest this claim language. The Office action then contends that this deficiency may be satisfied by combining Vickery ‘750 with Lucke ‘201. The undersigned submits that this argument fails not only because there is no motivation to combine the references but also because Lucke ‘201 does not regard applying therapeutic coating as suggested by the Office action. The spraying nozzle carrier 54 of Fig. 4 is not disclosed as carrying a coating containing therapeutic. Rather, Lucke ‘201 throughout the application describes how sugar is moved through the nozzle carrier 54. The language cited in Lucke ‘201 by the Office action (col. 4, lns. 2-23) uses the words “pharmaceutical coatings” but does not use them in the context of a coating containing pharmaceuticals. Rather, this language is properly read as meaning coatings that are placed on pharmaceuticals. Consequently, neither reference discloses the cited claim language and claims 1 and 2 are allowable over them.

As to the motivation to combine Lucke ‘201 and Vickery ‘750, the undersigned submits that a *prima facie* case of obviousness has not been made out because the statement in the Office action that “It would have been obvious to one of skill in the art at the time the invention was made,” is conclusory and because it lacks any citation to an objective source showing this purported motivation.

As to claim 12, the undersigned submits that it is at least patentable over the cited references because it recites, “...drawing a compressible fluid into the drum.” (emphasis added). Neither reference discloses or suggests this language and there is no motivation to combine them to recite all of the language of the claim, including the recited language. As to the missing claim language, while Lucke ‘201 mentions gas channels, *see e.g.* col. 3 at lns.

16-19, it has no discussion or suggestion of drawing a gas, let alone drawing a gas into a drum. In other words there is no discussion of applying a vacuum or other force of some kind to pull the gas. Lucke '201 mentions supplying the gas, *i.e.* pushing the gas, but this is the opposite of drawing. For at least these reasons, claim 12 is patentable over the cited references.

As to claim 13, it is patentable over the cited references at least because it recites, "...heating the rotatable drum after spraying the therapeutic into the drum." (emphasis added). Comparatively, there is no disclosure or suggestion to perform the affirmative step of heating the rotatable drum after spraying therapeutic into the drum. The portion of Vickery '750 cited by the Office action heats the bed while coating is ongoing, not after.

In addition to the reasons discussed above, new claims 30-35, which depend from claims 1, 12, and 13 are also patentable over Lucke '201 and Vickery '750 at least because neither reference discloses or suggests a reconfigurable medical implant or a stent.

For at least these reasons, claims 1, 12, and 13, as well as their dependent claims, are patentable over the cited references.

b. Claim 4 stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Pat. No. 3,991,750 to Vickery in view of U.S. Patent No. 5,302,201 to Lucke and further in view of Forster, U.S. Pat No. 4,581,242.

In addition to the reasons discussed above, the undersigned also submits that there is no motivation to combine the patents as suggested by the Office action for claim 4. For one, Lucke '201 pushes gas out of the rotating drum 48 during its operation (see arrows 62 in Fig. 4 of Lucke '201), so the suggestion of using Forster to modify Lucke '201 by blowing air up through a bed of objects is exactly opposite to the teaching and operation of Lucke '201, and, thus, is improper and cannot stand.

c. Claims 5 and 25 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over U.S. Pat. No. 5,756,553 to Iguchi et al. in view of U.S. Pat. No. 4,581,242 to Forster, and further in view of U.S. Pat. No. 6,607,598 to Schwarz et al.

The undersigned submits that claim 5 is at least patentable over the cited references because it recites, "placing a reconfigurable medical implant in the drum of the pan coater,

the medical implant having a masking material on at least one of its surfaces, the medical implant free to strike at least the bottom or wall of the drum.”

The undersigned submits that claim 25 is at least patentable over the cited references because it recites, “placing a reconfigurable medical implant in the drum of the pan coater; injecting a compressible fluid into the drum with a force sufficient to maintain the medical implant aloft in the drum to tumble the medical implant, the medical implant being free to strike at least the bottom or wall of the drum.”

Thus, in none of the three cited references is a reconfigurable medical implant placed in pan coater in such a manner that it may strike one or more surfaces of the drum during coating.

In addition, in the December 3, 2004 Office action it appears that Official Notice was utilized to support the rejection of claim 6. Applicant respectfully traverses the Official Notice taken and requests evidence to substantiate the alleged motivations to modify Iguchi '553. Specifically, should this rejection be maintained, Applicant respectfully requests evidence to substantiate the theory that it would have been obvious to one having ordinary skill in the art to have included a therapeutic recovery reservoir as required by claim 6. Such support is required under MPEP 2144.02 and 2144.03. Iguchi '553 nor Forster '242, by the Examiner's own admission, discloses such a reservoir, and unsupported allegations cannot be used to reject the claims.

For at least these reasons, claims 5 and 25, as well as their dependent claims, are patentable over the cited references.

d. Claims 7 and 9 stand rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Vickery '750 in view of Lucke '201, and further in view of U.S. Pat. No. 4,586,457 to Dunajtschik.

The undersigned submits that claim 7 is at least patentable over the cited references because it recites, “re-circulating the compressible fluid in the drum.” (emphasis added)

The undersigned submits that claim 9 is at least patentable over the cited references because it recites, “heating the compressible fluid in the compressible fluid source prior to forcing the compressible fluid into the drum.” (emphasis added)

As to claim 7, in addition to the references failing to disclose the cited language, it is also patentable over the references because there is no motivation to combine the references to teach the re-circulation of the compressible fluid in the drum. In fact, the references teach away from the suggested combination. For instance, should the drum 48 of Lucke '201 be sealed in a manner taught by Dunajtschik '457 (at col. 7, lines 14-26), the Lucke '201 system would not function as the segments 51 would not be able to allow air to exit the drum. Without this venting, Lucke '201 would not work and may even fail if pressure inside the drum exceeded its design limits.

With respect to claim 9, there is no disclosure or suggestion in the references to perform the affirmative step of heating the compressible fluid source prior to forcing the compressible fluid into the drum. The portion of Vickery '750 cited by the Office action heats the bed while coating is ongoing, not prior to delivering the fluid.

For at least these reasons, claims 7 and 9, as well as their dependent claims, are patentable over the cited references.

e. Claim 19 stands rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Vickery '750 in view of Lucke '201, and further in view of U.S. Pat. No. 3,696,188 to Fernandez et al.

The undersigned submits that claim 19 is at least patentable over the cited references because it recites, “...recycling therapeutic that did not adhere to the implant during spraying....” (emphasis added) Comparatively, the cited references do not suggest or disclose this language. For at least this reason, claim 19 is patentable.

**IV. Conclusion**

In view of the above amendments and remarks, it is believed that the above-identified application is in condition for allowance, and notice to that effect is respectfully requested. Should the Examiner have any questions, the Examiner is encouraged to contact the undersigned at the telephone number indicated below.

The Commissioner is authorized to charge any fees or credit any overpayments which may be incurred in connection with this paper under 37 C.F.R. §§ 1.16 or 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

Date: May 2, 2006

  
\_\_\_\_\_  
Daniel G. Shanley  
Reg. No. 54,863

KENYON & KENYON LLP  
1500 K Street, N.W., Suite 700  
Washington, D.C. 20005  
Tel: (202) 220-4200  
Fax: (202) 220-4201